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8		DISTRICT COURT	
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10	CAROLE MIGDEN, et al.,) No.: 2:08-CV-00486-EFB	
11	Plaintiffs,) DECLARATION OF ROGER SANDERS	
12	VS.) IN SUPPORT OF PLAINTIFFS' MOTION) FOR PRELIMINARY INJUNCTION	
13	CALIFORNIA FAIR POLITICAL PRACTICES) Hearing:	
14	COMMISSION, et al.,)) Date: April 16, 2008	
15	Defendants.) Time: 10:00 a.m.) Crtrm: 25	
16		(The Honorable Edmund F. Brennan)	
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28	DECLARATION OF ROGER SANDERS IN SUPPORT OF		
	PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION - NO. 2:08-CV-00486-EFB		

- NO. 2:08-CV-00486-EFB

DECLARATION OF ROGER SANDERS

- I, Roger Sanders, declare under penalty of perjury as follows:
- 1. From the date of its establishment on December 18, 2000 until March 2007, I was the treasurer of the campaign committee known as "Friends of Carole Migden," which was established for Carole Migden's 2004 election to the State Senate ("the "2004 Committee"). I also was the treasurer of the campaign committee known as "Re-Elect Assemblywoman Carole Migden," which was established for Carole Migden's 1998 and 2000 Assembly elections (the "Assembly Committee"), and of the "Carole Migden Leadership Committee," which was established for Ms. Migden's 2002 election to the State Board of Equalization. I am not a professional treasurer, but rather took on the task as a volunteer.
- 2. In November 2000, the voters approved Proposition 34, which made significant changes to the campaign finance rules for state candidates, including imposing contribution limits. At the end of December 2000, the Assembly Committee had approximately \$900,000 in pre-Proposition 34 funds, that is, funds raised prior to January 1, 2001, when Proposition 34 took effect. My understanding was that Proposition 34 allows candidates to use their pre-Proposition 34 funds for a future election without restriction. Senator Migden and I agreed that it was very important that she be able to use her unrestricted pre-Proposition 34 funds to run for a future office. Senator Migden therefore instructed me to take whatever steps were necessary to ensure that her pre-Proposition 34 funds could be used for future elections.
- 3. At that time, Senator Migden was in her last term as a member of the Assembly. She wanted to save the approximately \$900,000 she had left of pre-Proposition 34 campaign funds for use in a future election to a different state office. Indeed, in December 2000, Senator Migden filed a statement of organization to open a committee to run for State Senate in 2004 (the 2004 Committee). In January 2001, Senator Migden filed a statement of organization to run for the Board of Equalization in 2002, using a committee named "Carole Migden Leadership Committee." Senator Migden made it absolutely clear that she intended to run for future office, and that we needed to ensure her ability to use her pre-Proposition 34 campaign funds in such a run. It would be some time, however, before we

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would know how much of the pre-Proposition 34 money she would need, if any, for either or both of those races.

- As of March 2001, there were many gray areas about using contributions raised for a pre-Proposition 34 election in a new campaign. The state Fair Political Practices Commission had not yet decided how incumbent officeholders like Senator Migden should handle their pre-Proposition 34 funds. In particular, the FPPC had not decided whether the funds must be kept separate from funds raised after Proposition 34 went into effect; whether pre-Proposition 34 funds could be transferred to a future campaign once or multiple times; and whether current campaign expenditures would be considered coming first from "old" funds or from "new" funds. Although no one knew it at the time, some of those questions would not be answered fully until early in 2003.
- 5. My greatest concern was protecting Senator Migden's ability to use her pre-Proposition 34 funds in a future election. I did not want to move those funds into the bank account we had established for the Board of Equalization or Senate 2004 committee until the FPPC decided whether the money could only be transferred once. Senator Migden wanted to maintain the maximum flexibility with those funds, and I was concerned that if we transferred them to one of those accounts we might not be able to transfer them again. In the absence of guidance from the FPPC on this question, we agreed that I should transfer the pre-Proposition 34 funds out of her Assembly checking account into a separate interest-bearing account for use in a future election.
- 6. Therefore, based on the instructions from Senator Migden, and being as careful as I could be to ensure that the entire \$900,000 in pre-Proposition 34 funds would remain available for the Senate 2004 race or some other future election, I established a certificate of deposit ("CD") at Wells Fargo Bank in March 2001, into which I transferred the \$900,000 in pre-Proposition 34 funds. To open that Wells Fargo account I used the taxpayer identification number that was assigned to the 2004 Committee. That same taxpayer identification number was used for the Assembly Committee and for the Board of Equalization 2002 committee as well. I had checked with the Internal Revenue Service and been told that I should use the same number for all of those committees. The bank, however, continued to associate that taxpayer identification number with the name of the first committee to use it, which was the Assembly Committee. Thus, although I transferred the \$900,000

out of the Assembly account and into a separate account for Ms. Migden's future elections, the Assembly Committee name appeared on the Wells Fargo CD. I did not think the name on the account mattered since I had physically transferred the funds out of the Assembly checking account and there was no reason yet to designate the particular future election they would be used for.

- 7. I checked with the Fair Political Practices Commission's technical assistance staff to find out how to report the funds that we had moved into the CD. They told me that we had to maintain a clear audit trail between a committee bank checking account and the CD. Because of that, I continued to show the CD funds in the cash balance of the Assembly committee's campaign statements until 2003, even though the funds no longer were in that checking account. The only reason for this was to maintain a paper audit trail for the FPPC reports. At the time I opened the CD, Senator Migden was still in office and her pre-Proposition 34 funds were not surplus. There was no question in my mind that by physically transferring those pre-Proposition 34 funds out of the Assembly committee checking account and into a separate segregated fund set up for future elections, those funds would not become surplus. I thus assured Senator Migden that I had taken the steps necessary to maintain the maximum flexibility with her pre-Proposition 34 funds and allow them to be used for a future election. I do not believe Senator Migden's pre-Proposition 34 funds ever became surplus because they were removed from her Assembly Committee before they became surplus, and they are now part of her 2004 Committee funds, an office which she continues to hold.
- 8. When the Wells Fargo CD matured in March 2002, we decided to move the CD out of Wells Fargo and into an interest-bearing account at Sterling Bank. At Sterling Bank I used the taxpayer identification number for the 2004 Committee, but the bank put the Assembly Committee name on the account.
- 9. I am aware that surplus funds cannot be used for a future election. At no time was I concerned about the \$900,000 in pre-Proposition 34 money being deemed "surplus" because that money had been transferred out of the Assembly Committee checking account long before Senator Migden left office, and into a separate account established for a future election. I have always assured Senator Migden that she could use the funds for a future election.

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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on March 7_, 2008 at San Broxesco, California.

ROGER SANDERS

DECLARATION OF ROGER SANDERS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION - NO. 2:08-CV-00486-EFB

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1 <u>PROOF OF SERVICE</u> 2 1, the undersigned, declare under penalty of perjury that: 3 I am a citizen of the United States, over the age of 18, and not a party to the within 4 cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577. 5 On March 7, 2008, I served a true copy of the following document(s): Declaration of Roger Sanders in Support of 6 Plaintiffs' Motion for Preliminary Injunction 7 on the following party(ies) in said action: 8 Scott Hallabrin, General Counsel Attorneys for Defendants 9 Lawrence T. Woodlock, Senior Commission Counsel 10 Fair Political Practices Commission 428 "J" Street, Suite 620 11 Sacramento, CA 95814-2329 Phone: (916) 322-5660 12 Fax: (916) 327-2026 Email: shallabrin@fppc.ca.gov 13 Email: lwoodlock@fppc.ca.gov BY UNITED STATES MAIL: By enclosing the document(s) in a sealed 14 envelope or package addressed to the person(s) at the address above and 15 depositing the sealed envelope with the United States Postal Service, with 16 the postage fully prepaid. 17 Placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for 18 collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in 19 the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully 20 prepaid. 21 BY OVERNIGHT DELIVERY: By enclosing the document(s) in an envelope \boxtimes 22 or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and 23 overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier. 24 BY MESSENGER SERVICE: By placing the document(s) in an envelope or 25 package addressed to the persons at the addresses listed and providing them to a professional messenger service for service. 26 27

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1 2 3 4	BY FACSIMILE TRANSMISSION: By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files. BY EMAIL TRANSMISSION: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to	
5 6	accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.	
7	I declare, under penalty of perjury, that the foregoing is true and correct. Executed	or
8	March 7, 2008, in San Leandro, California.	
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